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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re K.F., a Person Coming Under the
Juvenile Court Law.

B164656

(Los Angeles County
Super. Ct. No. CK45057)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

RICHARD F.,

Defendant and Appellant;

LENORE I.,

Intervenor and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Albert J. Garcia, Commissioner. Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, and Lois D. Timnick, Deputy County Counsel, for Petitioner and Respondent.

In this appeal, father Richard F. challenges a juvenile court order terminating his parental rights as to his daughter K.F. pursuant to Welfare and Institutions Code section 366.26.¹ He claims the court erred in finding that his relationship with K.F. did not meet the subdivision (c)(1)(A) visitation exception to section 366.26. The record supports the trial court's conclusion, and we affirm the judgment.

FACTS

K.F. was born in March 2001, three weeks prematurely, with a positive toxicology screen for cocaine. She was detained one week later by the Department of Children and Family Services (DCFS) based on mother's drug use, father's failure to take action to protect the child despite knowing of mother's drug use during pregnancy, and his own history of drug-related criminal convictions. K.F. was declared a dependent child and has been in foster care since that time. Father maintained regular visitation with K.F., except for the time he was incarcerated.²

In April 2001, father agreed to a six-month disposition plan for suitable placement and reunification services. For his part, the plan included random drug testing, participation in a parenting education program, and individual counseling to address issues of drug awareness. In the event father missed a test, he was to complete a full drug abuse program and an after-care program.

The trial court terminated family reunification services in January 2002 because father failed to meet his obligations under the plan. A section 366.26 hearing was set for January 2003, to select a permanent plan for K.F. At that time, father was still

¹ All further statutory references are to this code.

² At the time of the section 366.26 hearing, father was still incarcerated and it was unknown when he would be released.

incarcerated and it was unknown when he would be released. The section 366.26 hearing trailed a hearing on father's section 388 petition, which the court denied. At the section 366.26 hearing, father argued that he satisfied the requirements of the section 366.26 (c)(1)(A) exception that prevents termination of parental rights when "[t]he parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The trial court heard testimony from father, the social worker, and a counselor. It received DCFS reports and two bonding studies with respect to father's progress and relationship with K.F. The trial court found the relationship did not promote the child's well-being to such an extent that it would be detrimental to her to terminate the relationship. The trial court terminated father's parental rights, stating "I believe the father loves the child and the child recognizes him as someone who comes and visits her, but that's the extent of what I believe is the true relationship here. I do not believe that it meets the exception." Father appeals from this order.

DISCUSSION

Father argues the trial court erred in terminating parental rights and selecting adoption as the permanent plan because the benefit K.F. received from continuing the parent-child relationship outweighed the benefit to her with new, adoptive parents. (§ 366.26, subd. (c)(1)(A).) "If there is substantial evidence to support the findings of the juvenile court, we uphold those findings." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) We find the ruling in this case is supported by substantial evidence.

"Where the juvenile court finds that the child is likely to be adopted, it must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental under one of four specified exceptions." (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 773.) "One statutory exception is that the 'parents . . . have maintained regular visitation with the child and the child would benefit from continuing the relationship.' (§ 366.26, subd. (c)(1)(A).)" (*Ibid.*)

““The existence of interaction between natural parent and child will always confer some incidental benefit to the child. Nevertheless, the exception in section 366.26, subdivision (c)(1)(A), requires that the parent-child relationship promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. [Citation.]”” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52, fn. 4.) In other words, if “severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed,” the preference for adoption is overcome and the natural parent’s rights are not terminated. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466, original italics.)

The trial court concluded that K.F. was likely to be adopted. This was shown by the fact that the foster mother had begun the process of adoption and had received approval from DCFS. Since the child was likely to be adopted, the trial court turned to a determination whether father satisfied the section 366.26 (c)(1)(A) exception to termination of parental rights. The court found that he maintained regular visitation, but that the benefits to K.F. from continuing the parent-child relationship did not outweigh the benefits to her from adoption. “The existence of this relationship is determined by ‘[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs’” (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) K.F. was less than two years old at the time of the section 366.26 hearing and she had been living with the foster mother since she was 10 days old. She never had lived with father. From the day she was born, she was in the custody of DCFS. Presently, father has two-hour unmonitored visits with K.F. that take place at the agency. He visits approximately three times per month. His visits had not progressed for K.F. to visit or stay at his home overnight.

Father claims “[t]he parent/child bond was worth preserving.” He points out that he visited K.F. consistently and had a loving relationship with her. He was affectionate with her, comforted her when she cried, embraced her in his arms, and talked to her.

Assuming that father does have a loving relationship with K.F., “frequent and loving contact” is insufficient by itself to support the exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) “[F]or the exception to apply, the emotional attachment between the child and parent must be that of a parent and child rather than one of being a friendly visitor” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 468.)

The bond between K.F. and father is friendly rather than parental. As summarized by a social worker assigned to the case, “K.F. identifies with [father] as a relative or a friend and it is clear that K.F. identifies with the caretaker as her parent.” She would cry for the first five to fifteen minutes of the visits with father. Although she eventually stopped crying, she also watched the door consistently for the foster mother and would run to her the minute she arrived. She never approached father on her own or without being instructed to do so. She was never seen hugging him. Despite regular visitation, acting unhappy because of a parent’s visit or indifference to a parent are factors that indicate lack of the necessary positive relationship. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.)

Both the social worker and Dr. Ward noticed the lack of a parental bond between K.F. and father. The social worker stated: “[A]lthough [he] has been visiting K.F. regularly since birth, the parent/child relationship has not been established” This opinion was supplemented by Dr. Ward’s bonding study, in which he concluded: “[I]t would be hard to say that she is bonded to this man, in contrast to the rather obvious bond and relationship with her de facto mother.” He also estimated that father may never approach or rival the apparent maternal-child type bond that existed between K.F. and the foster mother.

The record shows K.F. is very attached to the foster mother, whom she has lived with most of her life and identifies as her mother. Dr. Eisen, who studied the bond between K.F. and the foster mother noted: “[The foster mother] is in fact this child’s [de facto] mother (the only one she has ever known). Terminating this bond with her primary caretaker since birth could have serious adverse consequences. Terminating this relationship and removing K.F. from [the foster mother] should not be done without very

good cause that would outweigh the potential harm to the child.” (Original italics and underscoring.)

““While friendships are important, a child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.”” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350, quoting *In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) The record indicates that father was unable to meet the requirements for reunification and that he was unable to care for K.F. in a parental capacity.

Reunification services were terminated in January 2002 after father failed to satisfy the case plan by the six-month deadline. He failed to acquire adequate housing for K.F., and failed to enroll in individual counseling, parenting class, and after-care program. He missed five random drug tests and tested positive three of five times between November and December 2001.

By the time of the section 366.26 hearing in January 2003, father claimed to have finished the drug abuse program and parenting class but had not shown a certificate of completion to DCFS.³ He had finally enrolled in an after-care program but was discharged because of lack of participation. Two weeks before the section 366.26 hearing, he was incarcerated for failing to report to his parole officer for over a year and to drug test for parole as ordered. He said he would be released in March of that year but this was an estimation at best.

Although father is not ready to take care of K.F., the foster mother is. DCFS reports show K.F. received good care in a nurturing, safe, and stimulating environment with the foster mother. K.F. was well bonded, openly affectionate, and at ease with the foster mother. She looked around for the foster mother when somebody else was holding her and recognized and responded to her voice. K.F. also received timely and appropriate medical attention from the foster mother. A home study on the foster mother was

³ The certificates were later submitted to DCFS and it showed that father had completed these programs on August 13, 2002.

approved by the Optimist Foster Family and Adoption Services. DCFS also expressly stated that adoption by the foster mother was the best plan for the child.

Father argues he meets the section 366.26 (c)(1)(A) exception to termination of parental rights, citing *In re Amber M.* (2002) 103 Cal.App.4th 681 and *In re Jerome D.*, *supra*, 84 Cal.App.4th 1200 for support. In those cases, the court found that the benefits of continuing the parent-child relationship outweighed the benefits of adoption.

Both cases are distinguishable. In *In re Amber M.*, *supra*, 103 Cal.App.4th 681, 684, the children were older and had been in the mother's care for much of their lives. The mother complied with all court orders and the bonding study revealed the children had a strong attachment to the mother. (*Id.* at pp. 686, 689.) In *In re Jerome D.*, *supra*, 84 Cal.App.4th 1200, there was insufficient evidence to support the child's "adoptability." (*Id.* at p. 1205.) Also, the child was nine years old and had lived with his mother for the first six and a half years of his life. (*Id.* at p. 1207.) He related to his mother as a parent and expressed his wish to live with her again. (*Id.* at p. 1207.) Experts concluded that severing the tie between mother and child would cause him to experience emotional and behavioral difficulties. (*Ibid.*) The courts found there was a parental bond in those cases, while the trial court here did not.

It was undisputed that K.F. was likely to be adopted by the foster mother. The court found that the benefit K.F. would receive from adoption by the foster mother outweighed the benefit she would receive from continuing the relationship with father. In light of substantial evidence supporting the trial court's finding as to father's failure to meet the section 366.26, subdivision (c)(1)(A) exception, we find the trial court did not err in terminating parental rights and selecting adoption as the permanent plan.

DISPOSITION

The order is affirmed.

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EPSTEIN, J.

We concur:

HASTINGS, J.

CURRY, J.